ssm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2886 OF 2007

Krishna Deju Shetty & Ors. ...Petitioners

Vs.

The Mogaveera Co-operative Bank Ltd. ...Respondents.

Mr.Uttam G. Tahiliani i/by Mr. S.R.Saudagar for the petitioner.

Mr. K.B. Adyanthaya for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 19th September, 2007

P.C.

1. The petitioners being dissatisfied by the impugned order, have filed the present writ petition. In the result, challenging the concurrent finding given by the court below confirming the original claim as raised by the respondent Bank.

2. The facts underlies are:-

. Some time in the year 1991, the respondent Bank sanctioned a loan of Rs.6,00,000/- (Rupees six lacs only) upon execution of various documents as a business deal. The account was operated. Some time in the year 1991, respondent bank filed dispute No. CC/I/1093 of 1991 in the Co-operative Court No.1,

Mumbai. The dispute was though contested yet the petitioners failed to submit their case through the evidence and further failed to justify their defence as raised.

3. Therefore, on 28/09/2005, the award came to be passed. The appeal dated 14/12/2005 being Appeal No.72 of 2005 dismissed on 09/08/2006 and lastly after rehearing, the impugned award has now therefore, been attained the finality. Unless rebutted, the accounts maintained and filed by the respondent Bank need to be respected. In the present case, admittedly apart from documents and record the respondent Bank had led the evidence to substantiate the same. On the contrary there is no contra-material on record. The basic submission is that inspite of repeated payment made nearly to the tune of Rs.7,00,000/- (Rupees seven lacs only), the respondent bank has failed to adjust the same and still both the courts granted the award. First of all, this submission for the first time in the writ petition just cannot be considered specially when the party fails to substantiate the case at the appropriate time inspite of the opportunity given and available. Even otherwise, there is a clear finding given that after considering the amount so paid, the

award is for the balance amount with the agreed interest i.e. 18.5% p.a..

4. This Court has adjourned this matter for more than six occasions and given full opportunity to settle the matter but in vain.

5. Therefore, considering the reasoning given by both the courts, I am of the view that there is no case made out by the petitioners to interfere in the same.

6. The petition is, therefore, dismissed with no order as to costs.

(ANOOP V. MOHTA, J.)